IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL NO 626 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

AMTHA NAROTAMBHAI

Appearance:

1. Criminal Appeal No. 626 of 1991

MR KOGJE, A.P.P. for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 21/01/2003

ORAL JUDGEMENT

1. Against the impugned Judgment and order of acquittal dated 21.5.1991, passed by the learned Chief Judicial magistrate, Bharuch, in Criminal Case No.27140 of 1990 acquitting the respondent - accused for the offences u/ss. 323, 504, 451 of I.P.Code the State of Gujarat has filed this Appeal.

2. Learned A.P.P. Shri Kogje took me through the entire Judgment and order of acquittal passed by the learned Magistrate. For acquitting the accused the learned Magistrate considered the fact that 2 important

witnesses, viz, Arvindbhai Bhatt and Indrajit, both from the Police Department, though alleged to have been remained present at the time of incident, have not examined by the prosecution and they were dropped. Police Jamadar Sahebrao, Ex.19 had drawn the inference about the incident, but in fact he had not witnessed the incident. No independent witnesses have corroborated the version of complainant about beating with but of riffle. The defence of the accused was that the complainant was in habit of leaving his point for which the accused scolded him, therefore, he had filed this police complaint. Another eye witness Namdev, though cited as witness, was not examined by the prosecution. The learned Magistrate refused to rely upon the evidence of Ullas, minor son of Purshottam, in view of his conduct of not shouting and not coming out from the house.

3. In view of the above, learned Magistrate has refused to place reliance upon the evidence of complainant Head Constable Parsottambhai Damubhai. in such type of cases when the incident alleged to have taken place in 1990 then after such a long period of 13 years this Court would not like to interfere with such a findings when the learned Magistrate has given cogent reason for acquitting the accused.

In view of the above this Appeal fail and is dismissed.

Date : January 21, 2003 (B.J.Shethna, J.)

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